

REMARKS

Entry of the foregoing and reconsideration of the subject application are respectfully requested in light of the amendments and comments which follow.

Claims 1-81 were pending in this application. In this response, claims 2-64 and 66-81 are amended, claims 1 and 65 are canceled, and claims 82-83 are added. Thus, claims 2-64 and 66-83 are pending.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the original claims and the specification, p. 5, l. 16 – p. 6, l. 30, p. 8, l. 25 – p. 9, l. 21, and p. 11, ll. 20-29. Thus, no prohibited new matter is believed to have been introduced. Amendments are made without disclaimer or prejudice to Applicant's right to pursue any cancelled subject matter in a continuing application.

INFORMATION DISCLOSURE STATEMENT

Applicants note with appreciation the acknowledgement of the Information Disclosure Statement filed August 7, 2006. However, it is not clear why DE 199 62 954 was not considered. The IDS and the reference meet the requirements under 37 C.F.R. § 1.98. A legible copy of the foreign patent was submitted and received by the Office. The non-English-language document is relevant and is not required to be translated, because it was cited in the International Search Report for this application. Once the minimum requirements of 37 C.F.R. § 1.97 and 37 C.F.R. § 1.98 are met, the examiner has an obligation to consider the information. *See* MPEP § 609. Therefore, the reference should be considered, and applicant respectfully requests the reference be listed in a PTO-892 form to signify that it has been considered.

CLAIM OBJECTIONS

Claims 1 and 78 are objected to because of informalities. Applicant canceled claim 1 rendering the objection moot, and claim 78 is amended to address the concern of the Examiner. Specifically, OCR is descriptively spelled out. Reconsideration and withdrawal of the rejection is respectfully requested.

REJECTIONS UNDER 37 C.F.R. § 112

Claims 2-64 and 66-81 stand rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reason presented at page 2 of the Official Action.

Applicants traverse. A claim complies with 35 U.S.C. § 112, second paragraph, when one of ordinary skill in the art understands what is claimed in light of the specification. *See Seattle Box Co. v. Industrial Crating & Packing Inc.*, 731 F.2d 818, 826, 221 U.S.P.Q. 568, 574 (Fed. Cir. 1984); See also MPEP § 2173.02. It is clear when “such as” is used in claims 4, 7, 9, 25, 29, 60, and 71, the meaning of the terms preceding the “such as” are ascertainable by one of ordinary skill in the art in light of the specification, and the immediately following term is an optional species of the preceding term. Therefore, the claims satisfy 35 U.S.C. § 112, second paragraph, and thus applicant respectfully request withdrawal of the rejection.

REJECTIONS UNDER 37 C.F.R. § 102

Claims 1-10 and 12-16 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent Application Publication 2002/0018545 to Crichlow (hereinafter “*Crichlow*”) for the reasons presented by pages 3-6 of the Official Action.

Claim 1 is canceled and claims 2-10 and 12-16 are now dependent on new claim 82, therefore rendering the rejection moot. However, the Examiner’s proposed rejection over *Crichlow* will be discussed to the extent it applies to claim 82. To establish a *prima facie* case of anticipation, a single prior art reference must teach each and every element of the claimed invention, either explicitly or inherently. *Verdegaal Bros. v. Union Oil Co. Cal.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

Crichlow at least fails to disclose “collecting readings . . . at fixed time intervals,” “creating consumption curves and/or kilowatt hour sale prices in effect at any given time in the at least one communication center, based on the information from one or multiple communication units,” and “transmitting the consumption curves and/or kilowatt hour sales prices to individual communication units.” *Crichlow* allegedly discloses a system for automatically reading a meter and transferring that information to the customers computer, which passes the information to the utility or energy company using the internet. *Crichlow* further allegedly discloses that customers can have access to the data warehouse of information at the utility or energy company, and pay their bills through the internet. However, *Crichlow* fails to disclose a method in which the at least one communication center creates and transmits consumption curves and/or kilowatt hour sales prices in effect at any given time to individual communication units.

Dependent claims 2-10 and 12-16, which depend from claim 82, are also not obvious for at least the same reasons as for claim 82. For at least these reasons, a *prima facie* case of anticipation has not been adduced, and the rejection should be withdrawn.

REJECTIONS UNDER 37 C.F.R. § 103

Claims 17-36 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Crichlow* for the reasons presented at pages 6-7 of the Official Action.

Applicants traverse the rejection. Claims 17-36, which depend from claim 82, suffer at least the same deficiencies as claim 82, and therefore are not patentable for at least the same reasons. Whether a claim is obvious is based on an objective analysis of the scope and content of the prior art, the differences between the prior art and each element of the claimed invention, and the level of skill in the pertinent art. *See Graham v. John Deere Co.*, 383 U.S. 1, 15-17 (1966). The Office's objective analysis of obviousness should be made explicit. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. ___, 82 U.S.P.Q.2d 1385, 1396 (2007); *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"). Both the suggestion of the claimed invention and the expectation of success must be in the prior art, not in the disclosure of the claimed invention. *In re Dow Chemical Co.*, 5 U.S.P.Q.2d 1529 (Fed. Cir. 1988). The Examiner fails to articulate a reason why it would be obvious to modify *Crichlow* to meet all the elements of claim 82.

Crichlow discloses a system that is more passive than the claimed method. *Crichlow* discloses a system in which the utility company collects and processes information, but other than sending a bill to the customer, there is no direct communication from the communication center of an utility company to a communication unit of the customer. Applicant has discovered a method of transmitting consumption curves and/or kilowatt hour sales prices in effect at any given time to individual communication units. There is no suggestion or an expectation of success in transmitting specific information, such as the consumption curves and pricing, directly to communication units at the customers location. This active communication between the communication center and communication unit is only found in applicant's disclosure. It is improper to use applicant's own disclosure in a hindsight analysis to support a conclusion of obviousness. The Office provides no proper reasoning to support a conclusion of obviousness, and thus for at least that reason, the rejection should be withdrawn.

Claims 65-73 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Crichlow* in view of U.S. Patent No. 6,246,677 to Nap et al. (hereinafter “*Nap*”) for the reasons presented at pages 7-8 of the Official Action.

Claim 65 is canceled and claims 66-73 are now dependent on new claim 83, therefore rendering the rejection moot. However, the Examiner's proposed rejection over *Crichlow* in view of *Nap* will be discussed to the extent it applies to claim 83.

Crichlow fails to disclose at least one communication center comprising “means for creating and transmitting consumption curves and/or kilowatt hour sale prices in effect at any given time to individual communication units.” There is no suggestion or expectation of success

in modifying the communication center of *Crichlow* to include these means. *Crichlow* is only concerned with a system that allows the utility company to automatically collect readings from customers' meters to prepare a bill that is sent to the customer. *Crichlow* fails to teach a system in which specific consumption information and pricing is sent directly to the customer's individual communication unit. The Office would be improperly relying on hindsight and applicant's own disclosure to support a conclusion that it would be obvious to modify the communication center of *Crichlow* to include "means for creating and transmitting consumption curves and/or kilowatt hour sale prices in effect at any given time to individual communication units."

Nap discloses installing the communication node or communication unit on top of a utility pole, where a customer would have no access. Therefore, there is no reason to create and transmit information from the communication center to the communication unit in *Nap*. Thus, *Nap* fails to cure the deficiencies of *Crichlow*, and the rejection should be withdrawn.

Dependent claims 66-73, which depend from claim 83, are also not obvious for at least the same reasons as for claim 83. For at least these reasons, a *prima facie* case of obviousness has not been adduced, and the rejection should be withdrawn.

CONCLUSION

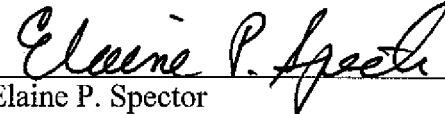
Should any questions arise in connection with this application, or should the Examiner believe a telephone conference would be helpful in resolving any remaining issues pertaining to this application, it is respectfully requested that the undersigned be contacted at the number indicated below.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0573. This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully Submitted,

Date: December 22, 2008
DRINKER BIDDLE & REATH LLP
Customer No. 55694
1500 K Street, N.W., Suite 1100
Washington, D.C. 20005-1209
Tel. No.: 202-842-8800
EPS:mk

By:


Elaine P. Spector
Reg. No. 40,116
Attorney for Applicants
Tel. No.: (202) 842-8863
Fax No.: (202) 842-8465